

## EXHIBIT D

### **FEDERAL PROVISIONS INCORPORATED BY REFERENCE, SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, AND GENERAL FEDERAL PROVISIONS - STATE ENERGY PROGRAM (SEP)**

For purposes of this Exhibit D, the term “subawardee” refers to any entity other than a vendor that receives funding from the Borrower to carry out or support any portion of this Agreement. The term “vendor” refers to those entities defined as such by OMB Circular A-133 (see Subpart B, Sections .105 and .210). The Borrower must include all of the provisions below in its agreements with subawardees. It must include in its agreements with vendors only the provisions below that reference vendors.

#### **1. FEDERAL REGULATIONS/GUIDELINES/OMB CIRCULARS INCOPORATED BY REFERENCE**

The Office of Management and Budget (OMB) Circulars, federal regulations, and guidelines checked below are incorporated as part of this Agreement. These Terms and Conditions and any Special Conditions take precedence over the circulars, regulations, and guidelines checked below. OMB Circulars may be accessed on the OMB web site at [www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html) or by calling the Office of Administration, Publications Office, at (202) 395-7332. Federal regulations may be accessed at <http://ecfr.gpoaccess.gov>.

The Borrower must include in its awards the provisions below that apply to the particular organization concerned.

- ☒ Title 10 Code of Federal Regulations (CFR) Part 600: Department of Energy (DOE) Financial Assistance Regulations
- ☒ Title 10 Code of Federal Regulations (CFR) Part 420: State Energy Program
- ☒ Title 48 Code of Federal Regulations (CFR), Ch. 1, Subpart 31.2: Contracts with Commercial Organizations (Supplemented by 48 CFR, Ch. 9, Subpart 931.2 for Department of Energy grants) (commercial firms and certain non-profit organizations)
- ☒ State Energy Program Funding Opportunity Announcement DE-FOA-0000052, CDFA Number 81.041, State Energy Program (<https://www.fedconnect.net/FedConnect/>)

- ☒ OMB Circular A-102: Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- ☒ OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (also applicable to private entities)
- ☒ OMB Circular A-87: Cost Principles for State, Local and Tribal Governments
- ☒ OMB Circular A-21: Cost Principles for Educational Institutions
- ☒ OMB Circular A-122: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Non-Profit Organizations (non-profit organizations and individuals, except for those specifically exempted)
- ☒ OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations
- ☐ Other: \_\_\_\_\_
- ☐ None

## **2. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

### **A. ARRA-FUNDED PROJECT**

Funding for this award is from the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. Funding for this award is authorized by Public Resources Code, Section 25422, and the State Energy Program, Federal Grant Number DE-EE0000221, CFDA Number 81.041. The federal grant term expires on April 30, 2012. The Borrower and all subawardees/vendors are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend this Agreement if the Borrower or its subawardee fails to comply with the reporting and operational requirements contained herein.

### **B. ENFORCEABILITY**

The Borrower agrees that if it or one of its subawardees/vendors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an

audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

### **C. REGISTRATION REQUIREMENTS**

Prior to beginning work, the Borrower must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register with the Central Contract Registration (CCR). Websites are as follows:

DUNS website: [http://www.dnb.com/US/duns\\_update](http://www.dnb.com/US/duns_update)

CCR website: <http://www.ccr.gov>

The Borrower must maintain current registrations in the CCR at all times during which it has an active award funded with ARRA funds. A DUNS Number is one of the requirements for registration in the CCR.

### **D. SEGREGATION OF COSTS AND RECORDS**

The Borrower and its subawardees/vendors must segregate the obligations and expenditures related to funding under ARRA. Financial and accounting systems should be revised as necessary to segregate, track, and maintain these funds apart and separate from other revenue streams. No part of the funds from ARRA shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for ARRA projects. Pursuant to 10 C.F.R. section 600.242 (incorporated by reference herein), records must be maintained for three (3) years after the loan is repaid in full or 3 years after the federal grant term, whichever is later, unless the Commission or Federal Government requests a longer retention period.

The Borrower and its subawardees/vendors must keep separate records for ARRA funds to ensure those records comply with the requirements of ARRA. If this loan is split-funded with non-ARRA funds, the Borrower must track and report the ARRA funds separately to meet the reporting requirements of ARRA and related guidance.

### **E. PROHIBITION ON USE OF ARRA FUNDS**

The Borrower agrees that, in accordance with ARRA, Section 1604, none of the funds provided under this agreement derived from ARRA may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

## **F. ACCESS TO RECORDS**

In accordance with ARRA Sections 902, 1514, and 1515, the Borrower agrees that it shall permit the State of California, the United States Comptroller General or his representative, or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records of the Borrower or any of its subawardees/vendors that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of the Borrower or any of its subawardees/vendors regarding the activities funded with funds appropriated or otherwise made available by ARRA. The Borrower shall include this provision in all of its agreements with its subawardees/vendors from whom it acquires goods or services in its execution of the ARRA-funded work.

## **G. PUBLICATION**

Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov), maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

## **H. PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS**

The Borrower agrees that both it and its subawardees/vendors shall comply with Section 1553 of ARRA, which prohibits all non-federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. The Borrower agrees that it and its subawardees shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

The requirements of Section 1553 of the ARRA are summarized below. They include, but are not limited to:

**Prohibition on Reprisals:** An employee of any non-federal employer receiving covered funds under ARRA may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a federal agency, or their representatives, information that the employee believes is evidence of:

- ☐ Gross management of an agency contract or grant relating to covered funds;
- ☐ A gross waste of covered funds;
- ☐ A substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- ☐ An abuse of authority related to the implementation or use of covered funds; or
- ☐ A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

**Agency Action:** Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- ☐ Order the employer to take affirmative action to abate the reprisal.
- ☐ Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- ☐ Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

**Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration:** Except as provided in a collective bargaining

agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under ARRA shall post notice of the rights and remedies as required therein. (Refer to Section 1553 of ARRA located at [www.recovery.gov](http://www.recovery.gov), for specific requirements of this section and prescribed language for the notices.)

#### **I. INFORMATION IN SUPPORT OF ARRA REPORTING**

The Borrower will be required to submit backup documentation for expenditures of funds under ARRA including such items as timecards and invoices. See Loan Agreement, Section 3, Loan Disbursement Schedule, for more details on backup documentation required for invoicing. In addition to the invoicing requirements, the Borrower shall provide copies of backup documentation at the request of the U.S. Department of Energy's (DOE's) Contracting Officer or designee, or the Commission's Contract Manager or designee.

#### **J. FALSE CLAIMS ACT**

The Borrower agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subawardee/vendor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

#### **K. AVAILABILITY OF FUNDS**

Funds appropriated under ARRA and obligated to this award are available for reimbursement of costs until the end of the loan term or March 31, 2012, whichever comes first.

**L. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF ARRA**

- 1) This award requires the Borrower to complete projects or activities which are funded under ARRA and to report on use of ARRA funds provided through this award. Information from these reports will be made available to the public.
- 2) The reports are due in accordance with Section 11 of this Loan Agreement in addition to this section.
- 3) Progress reports are due monthly by the third of the following month. For example, the January progress report is due by February 3.
- 4) The Borrower must maintain current registration in the CCR (<http://www.ccr.gov>) at all times during which it has an active federal award funded with ARRA funds. A DUNS Number (<http://www.dnb.com>) is one of the requirements for registration in the CCR.
- 5) The Borrower shall report the information described in Section 1512(c) of ARRA and other information reasonably requested by the State or required by the federal government or by the State to meet their obligation to provide accurate, complete, and timely information to the public; to meet the federal program reporting requirements; and/or to comply with State or federal law or regulation. Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of ARRA are pending review by the federal government, were published in the Federal Register on April 1, 2009 (74 FR 14828), and are to be provided online at [www.FederalReporting.gov](http://www.FederalReporting.gov).
- 6) The Borrower shall submit reports to the Commission's Project Manager in a format determined by the Commission. The Borrower must NOT register at [FederalReporting.gov](http://www.FederalReporting.gov).
- 7) The Borrower must provide information including, but not limited to, the following:

**a) ARRA Section 1512 Report**

- ☐ Direct jobs created (i.e., new positions created and filled or unfilled positions that are filled) and jobs retained (i.e., previously existing filled positions that are retained as a result of ARRA funds). Only include jobs that are directly funded by ARRA funds. The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule.
- ☐ Description of jobs created. Provide a brief description of impact on the Borrower’s workforce and include the types of jobs created and retained. Include time base (full-time or part-time) and duration (1 year, 1-2 years, 2-5 years, or more than 5 years).
- ☐ Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.
- ☐ Central Contractor Registration (CCR) number.
- ☐ Award number.
- ☐ Name (legal name as registered in CCR or D&B).
- ☐ The Doing-Business-As (DBA) name as registered in CCR or D&B.
- ☐ Address (physical location as listed in the CCR).
- ☐ Congressional district (based on physical location address).
- ☐ Type of entity (this is the “Business Type” in the CCR).
- ☐ Amount awarded (total amount of the Commission agreement).
- ☐ Amount received (total cumulative amount of Commission agreement funds received as of the reporting period).
- ☐ Date of award (date the Commission agreement was signed).
- ☐ Award period (term of the Commission agreement).
- ☐ Place of performance (the physical location of primary place of performance, including street address, city, state, zip code+4, country, congressional district, state senate district, and state assembly district).
- ☐ Area of benefit (e.g., state, county, city, special district).
- ☐ Names and total compensation of five most highly compensated officers for the calendar year in which the agreement is awarded if,
  - In the Borrower’s preceding fiscal year, the Borrower received –
    - 80 percent or more of its annual gross revenues from federal contracts (and subcontracts), loans,



- grants (and subgrants) and cooperative agreements; and
- \$25,000,000 or more in annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements
- The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.
- ☐ Vendor Data Elements (purchases \$25,000 or above)
  - DUNS or name.
  - Zip code of Headquarters.
  - Description of the product and/or service provided by the vendor.
  - The amount invoiced from the vendor (aggregated) that will be paid with ARRA funds.

**b) U.S. Department of Energy SEP Progress Report**

- ☐ A comparison of the actual accomplishments with the goals and objectives established for the period and reasons why the established goals were not met.
- ☐ A discussion of what was accomplished under these goals during this reporting period, including major activities, significant results, major findings or conclusions, key outcomes or other achievements. This section should not contain any proprietary data or other information not subject to public release. If such information is important to reporting progress, do not include the information, but include a note in the report advising the reader to contact the Principal Investigator or the Project Director for further information.
- ☐ Cost Status. Show approved budget by budget period and actual costs incurred. Separate costs by project activities, administration, and evaluation.
- ☐ Schedule Status. List milestones, anticipated completion dates, and actual completion dates.
- ☐ Any changes in approach or aims, and reasons for change.
- ☐ Actual or anticipated problems or delays, and actions taken or planned to resolve them.
- ☐ Any absence or changes of key personnel or changes in consortium/teaming arrangement.
- ☐ A description of any product produced or technology transfer activities accomplished during this reporting period, such as:

- Publications (list journal name, volume, issue); conference papers; or other public releases of results.
  - Web site or other Internet sites that reflect the results of this project.
  - Networks or collaborations fostered.
  - Technologies/techniques.
  - Inventions/patent applications.
  - Other products, such as data or databases, physical collections, audio or video, software or network, models, educational aid or curricula, instruments or equipment.
- ☐ Performance Metrics
- Energy saved (kWh, therms, gallons, Btu, etc.).
  - Renewable energy installed capacity and generated.
  - GHG emissions reduced (tons) (CO2 equivalents) (methane, carbon, sulfur dioxide, nitrogen oxide, carbon monoxide).
  - Energy cost savings.
  - Funds leveraged.
- ☐ Project type metrics. The key metrics to be reported will vary by project type. See Exhibit D, Attachment 6, Project Type Metrics.

**M. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) — SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

The Borrower agrees that in accordance with ARRA, Section 1605, neither it nor its subawardees/vendors will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Borrower understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

1) Definitions. As used in this award term and condition—

- a) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—
  - ☐ Processed into a specific form and shape; or
  - ☐ Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
- b) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.
- c) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

2) Domestic preference.

- a) This award term and condition implements Section 1605 of the ARRA by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph 2b and 2c of this section and condition.
- b) This requirement does not apply to the material listed by the Federal Government as follows:

—None

c) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph 2b of this section and condition if the Federal Government determines that—

- ☐ The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
- ☐ The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- ☐ The application of the restriction of Section 1605 of the ARRA would be inconsistent with the public interest.

3) Request for determination of inapplicability of Section 1605 of the ARRA.

a) (i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph 2c of this section shall include adequate information for Federal Government evaluation of the request, including—

- ☐ A description of the foreign and domestic iron, steel, and/or manufactured goods;
- ☐ Unit of measure;
- ☐ Quantity;
- ☐ Cost;
- ☐ Time of delivery or availability;
- ☐ Location of the project;
- ☐ Name and address of the proposed supplier; and
- ☐ A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph 2c of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph 4 of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after ARRA funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination

and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

- b) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to Section 1605 of the ARRA applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).
  - c) Unless the Federal Government determines that an exception to Section 1605 of the ARRA applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with Section 1605 of ARRA.
- 4) Data. To permit evaluation of requests under paragraph 2 of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

**Foreign and Domestic Items Cost Comparison**

<u>Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Cost (\$s)</u>
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\*Include all delivery costs to the construction site.]

**N. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE ARRA**

In accordance with ARRA, Section 1606, the Borrower assures that it and its subawardees/vendors shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section.

The Borrower will complete and certify by signature on Attachment 7 of this Agreement its commitment to comply with 29 CFR 5.5, and return it to the Commission Grants and Loans Officer.

**O. ARRA TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS**

- 1) To maximize the transparency and accountability of funds authorized under ARRA as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-102 Common Rules provisions, the Borrower agrees to maintain records that identify adequately the source and application of ARRA funds. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.
- 2) If the Borrower is covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," the Borrower agrees to separately identify the expenditures for federal awards under the ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for federal awards made under ARRA separately on the SEFA, and as separate rows under Item 9 of

Part III on the SF–SAC by CFDA number, and inclusion of the prefix “ARRA-” in identifying the name of the federal program on the SEFA and as the first characters in Item 9d of Part III on the SF–SAC.

- 3) The Borrower agrees to separately identify to each subawardee, and document at the time of subaward and at the time of disbursement of funds, the federal award number, CFDA number, and amount of ARRA funds. When the Borrower awards ARRA funds for an existing program, the information furnished to subawardee shall distinguish the subawards of incremental ARRA funds from regular subawards under the existing program.
- 4) The Borrower agrees to require its subawardees to include on their SEFA information to specifically identify ARRA funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the federal awarding agencies, Offices of Inspector General, and the Government Accountability Office.

**P. DATA IN SUPPORT OF ENERGY SAVINGS AND EMISSION REDUCTIONS**

- 1) The Commission may request utility bill data from ARRA SEP program participants to track program energy saving and greenhouse gas emission reduction impacts. Upon request, ARRA SEP program participants must be prepared to provide utility billing data for at least the 12 months preceding and the 12 months following the project’s implementation of a building retrofit project. To ease the burden of this data provision by the participant, the Commission will work with the participant’s utility company to facilitate the electronic exchange of the required billing data. The Borrower authorizes the Commission to exchange this data with the Borrower’s energy utility company and agrees to complete an authorization form if requested by the Commission.
- 2) Upon written request from the Commission, the Borrower and its subawardees shall allow the Commission or its agent access to facilities and records and allow the Commission or its agent to collect data needed to measure and verify electricity and fuel reductions (this may include but is not limited to utility bills, metering data, facility equipment surveys, information on operational practices, and site occupancy levels). Further, if requested, the Borrower and subawardee must provide the Commission or its agent associated data from a period prior to the start of the project as necessary to establish baseline energy

and/or fuel use. The Borrower shall include this provision in its subaward agreements.

#### **Q. STATE ARRA GUIDELINES FOR STATE ENERGY PROGRAM**

The Commission's *Guidelines for the State Energy Program*, dated September 30, 2009, (publication number CEC-150-2009-004-F) are hereby incorporated by reference and made a part of this Agreement. The Borrower warrants that it has read and understands the Guidelines and acknowledges that requirements specified therein apply to the Borrower and the funding provided under this Agreement. The Borrower acknowledges that the Guidelines are subject to change pursuant to Public Resources Code Section 25462 and that any changes made to the Guidelines shall apply to the Borrower and the funding provided under this Agreement.

#### **3. SITE VISITS**

The Commission, the federal awarding agency, and/or their designees have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. The Borrower must provide and must require subawardees to provide reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

#### **4. NON-DISCRIMINATION CLAUSE**

This award is subject to the provisions of 10 CFR 1040.1 *et seq.*, Nondiscrimination in Federally Assisted Programs.

The Borrower will complete and certify by signature on the DOE Form 1600.5, U.S. DOE "Assurance of Compliance," (Exhibit D, Attachment 1 of this Agreement) its commitment to comply with this law and return it to the Commission Grants and Loans Officer.

#### **5. CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG FREE WORKPLACE REQUIREMENTS**

This award is subject to the provisions of 10 CFR Part 601, 10 CFR Part 606, and 10 CFR Part 607.

The Borrower will complete and certify by signature on the Form "Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug Free Workplace Requirements" (Exhibit D, Attachment 2 of this



Agreement) its commitment to comply with these requirements and return it to the Commission's Grants and Loans Officer.

## **6. LOBBYING ACTIVITIES**

The Borrower agrees that none of the funds obligated under this agreement shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

If applicable, the Borrower will disclose any lobbying activities by completing and signing the Standard Form LLL (Exhibit D, Attachment 3 of this Agreement) and return it to the Commission's Grants and Loans Officer.

## **7. NATIONAL POLICY ASSURANCES**

The Borrower agrees to adhere to and include in any subawards the requirements set forth in the attached "National Policy Assurances" (Exhibit D, Attachment 4 of this Agreement).

## **8. PUBLICATIONS**

- A. The Borrower is encouraged to publish or otherwise make publicly available the results of the work conducted under this Agreement.
- B. An acknowledgment of Commission and federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

*Acknowledgment:* "This material is based upon work supported by the California Energy Commission and the U.S. Department of Energy under Award Number(s) DE-0000221."

*Disclaimer:* "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the California Energy Commission, the United States Government, nor any agency thereof, nor any employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the California Energy Commission, the United States Government, or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or

reflect those of the California Energy Commission, the United States Government, or any agency thereof.”

## **9. INTELLECTUAL PROPERTY PROVISIONS**

- A. The intellectual property provisions applicable to this award are provided as Exhibit D, Attachment 5, to this award.
- B. Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at [http://www.gc.doe.gov/documents/Intellectual\\_Property\\_\(IP\)\\_Service\\_Providers\\_for\\_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf).

## **10. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS**

The Borrower must obtain any required permits and comply with all applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

## **11. PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS CONTRACTORS' LABOR RELATIONS ON FEDERALLY FUNDED CONSTRUCTION PROJECTS**

- A. Unless in conflict with State or local laws, the Borrower must ensure that bid specifications, project agreement, or other controlling documents in construction contracts awarded pursuant to this Agreement, or pursuant to a subaward to this Agreement, do not:
  - 1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or
  - 2) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).
- B. The term "construction contract" as used in this provision means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.
- C. Nothing in this provision prohibits bidders, offerors, contractors, or subcontractors from voluntarily entering into agreements with labor organizations.

## **12. DECONTAMINATION AND/OR DECOMMISSIONING (D &D) COSTS**

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Borrower or its subawardees for (i) Decontamination and/or Decommissioning (D&D) of any of the Borrower's or its subawardees' facilities, or (ii) any costs which may be incurred by the Borrower or its subawardees in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

## **13. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE**

The Borrower is restricted from taking any action using federal funds for projects under this award that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing a final NEPA determination regarding these projects.

If the Borrower moves forward with activities that are not authorized for federal funding by the DOE Contracting Officer in advance of the final NEPA determination, the Borrower is doing so at risk of not receiving federal funding, and such costs may not be recognized as allowable cost share.

## **14. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

## **15. HISTORIC PRESERVATION**

Prior to the expenditure of federal funds to alter any structure or site, the Borrower is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the Borrower must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>. Section 110(k) of the NHPA applies to DOE funded activities. Borrowers shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Borrowers should be aware that the DOE Contracting Officer will consider the Borrower in compliance with Section 106 of the NHPA only after the Borrower has submitted adequate background documentation and the SHPO/THPO has provided written concurrence that it does not object to its Section 106 finding or determination. The Borrower shall provide a copy of this concurrence to the Commission and the Contracting Officer.

If the Borrower's project involves alteration of any structure or site, the Commission Grants and Loans Office will provide further guidance on the Section 106 process.

## **16. AVAILABILITY OF FEDERAL FUNDS**

It is mutually agreed that partial or whole funding for this Agreement is dependent upon a federal agreement (DE-EE0000221) that has a scheduled budget period end date of April 30, 2012, and is subject to the following provisions: (1) This Agreement is subject to any additional restrictions, limitations, or conditions enacted by Congress or any statute enacted by Congress that may affect the provisions, terms, or funding of this Agreement; (2) Funding for this Agreement is subject to the approval of the U.S. Department of Energy (DOE) and to any additional restrictions, limitations, or conditions imposed by DOE, federal law, federal court judgments, and/or federal agency orders which may affect the provisions or terms of this Agreement; (3) If Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds; and (4) The Commission has the option to invalidate the Agreement under the 30-day cancellation clause or to amend the Agreement to reflect any reduction in funds.

## **17. RESOLUTION OF CONFLICTING CONDITIONS**

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

## **18. STATEMENT OF FEDERAL STEWARDSHIP**

DOE will exercise normal federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

## **19. UTILITY REBATES**

ARRA State Energy Program funding must be used to create new programs or expand existing programs, including ratepayer-funded programs, and not to supplant or replace existing state, ratepayer, or other funding. Therefore, if after the project is completed, the Borrower receives a rebate from its utility or other source for all or a portion of the project costs that have been funded by this loan, the Borrower must submit principal repayment to the Commission in the amount of that rebate within 10 working days of receipt of the rebate. This repayment will be considered an unscheduled principal repayment.

**EXHIBIT D****ATTACHMENT 1****ASSURANCE OF COMPLIANCE**

DOE F 1600.5  
(06-94)

All Other Editions are Obsolete

U.S. Department of Energy  
Assurance of Compliance

OMB Control No.  
1910-0400

**Nondiscrimination in Federally Assisted Programs****OMB Burden Disclosure Statement**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422 - GTN, Paperwork Reduction Project (1900-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1900-0400), Washington, DC 20503.

**(Hereinafter called the "Applicant")**

HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L.88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub.L.93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub.L.93-438), Title IX of the Education Amendments of 1972, as amended (Pub.L.92-318, Pub.L.93-568, and Pub.L.94-482), Section 504 of the Rehabilitation Act of 1973 (Pub.L.93-112), the Age Discrimination Act of 1975 (Pub.L.94-135), Title VIII of the Civil Rights Act of 1968 (Pub.L.90-284), the Department of Energy Organization Act of 1977 (Pub.L.95-91), and the Energy Conservation and Production Act of 1976, as amended (Pub.L.94-385) and Title 10, Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

**Applicability and Period of Obligation**

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

**Employment Practices**

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age, or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs; or other forms of compensation and use of facilities.

**Subrecipient Assurance**

The Applicant shall require any individual, organization, or other entity with whom it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, the subrecipient shall be required to sign a written assurance form, however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

**Data Collection and Access to Records**

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to, the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age, and disability; (3) data regarding covered employment including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to its obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

DOE F 1600.5  
(06-94)  
All Other Editions are Obsolete

OMB Control No.  
1910-0400

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, building, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U.S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such data of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representation and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signature appears below and who are authorized to sign this assurance on behalf of the Applicant.

#### Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE).

Designated Responsible Employee

_____	(    )    -
Name and Title (Printed to Typed)	Telephone Number

_____	_____
Signature	Date

_____	(    )    -
Applicant's Name	Telephone Number

_____	_____
Address:	Date

\_\_\_\_\_

Agency Use Only

**EXHIBIT D  
ATTACHMENT 2**

**CERTIFICATIONS REGARDING LOBBYING;  
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS;  
AND DRUG-FREE WORKPLACE REQUIREMENTS**

***CERTIFICATIONS REGARDING LOBBYING;  
DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS;  
AND DRUG FREE WORKPLACE REQUIREMENTS***

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 10 CFR Part 601 "New Restrictions on Lobbying," 10 CFR Part 606 "Governmentwide Debarment and Suspension (Nonprocurement) and 10 CFR Part 607 "Governmentwide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

**1. LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**2. ADDITIONAL LOBBYING REPRESENTATION**

Applicant organizations which are described in section 501(c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, are not eligible for the receipt of Federal funds constituting an award, grant, or loan.

As set forth in section 3 of the Lobbying Disclosure Act of 1995 as amended, (2 U.S.C. 1602), lobbying activities are defined broadly to include, among other things, contacts on behalf of an organization with specified employees of the Executive Branch and Congress with regard to Federal legislative, regulatory, and program administrative matters.

Check the appropriate block:

The applicant is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986?

☐ Yes    ☐ No

If you checked "Yes" above, check the appropriate block:

The applicant represents that after December 31, 1995 it ☐ has ☐ has not engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.



### 3. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery; falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### 4. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub.L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

#### **ALTERNATE I (GRANTEES OTHER THAN INDIVIDUALS)**

(1) The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace not later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug- free workplace through implementation of paragraphs (a),(b),(c),(d),(e), and (f).

(2) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance: (Street address, city, county, state, zip code)

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☐ Check if there are workplaces on file that are not identified here.

#### **ALTERNATE II (GRANTEES WHO ARE INDIVIDUALS)**

(1) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant.

(2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

#### **5. SIGNATURE**

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Name of Applicant: \_\_\_\_\_

Printed Name and Title of  
Authorized Representative: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**EXHIBIT D  
ATTACHMENT 3**

**STANDARD FORM LLL  
DISCLOSURE OF LOBBYING ACTIVITIES**

Approved by OMB  
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure)

<b>1. Type of Federal Action: ____</b> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. Status of Federal Action:</b> _____ a. bid/offer/application b. initial award c. post-award	<b>3. Report Type: ____</b> a. initial filing b. material change  <b>For material change only:</b> Year _____ quarter _____ Date of last report _____
<b>4. Name and Address of Reporting Entity:</b> ____ Prime      ____ Subawardee ____ Tier____, if Known:   <b>Congressional District, if known:</b>	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>    <b>Congressional District, if known:</b>	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>7. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b>  \$	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>	<b>Signature:</b> _____ <b>Print Name:</b> _____ <b>Title:</b> _____ <b>Telephone No.:</b> _____ <b>Date:</b> _____	
<b>Federal Use Only</b>	<b>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)</b>	

**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

**EXHIBIT D  
ATTACHMENT 4**

**By signing this agreement or accepting funds under this agreement, the Recipient assures that it will comply with applicable provisions of the following National Policy Assurances**

NATIONAL POLICY ASSURANCES  
(August 2008)

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

**I. Nondiscrimination Policies**

You must comply with applicable provisions of the following national policies prohibiting discrimination:

- 1 On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by DOE regulations at 10 CFR part 1040;
- 2 On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042;
- 3 On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE regulations at 10 CFR part 1040;
- 4 On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041;
- 5 On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100; and
- 6 On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

**II. Environmental Policies**

You must:

- 1 Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency rules at 40 CFR part 32, Subpart J.
- 2 Immediately identify to us, as the awarding agency, any potential impact that you find this award may have on:

a. The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et. seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until we provide written notification of Federal compliance with NEPA, as implemented by DOE at 10 CFR part 1021.

b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.

c. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972(16 U.S.C. 1451, et. seq.).

d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et. seq.), concerning preservation of barrier resources.

e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act(42 U.S.C. 300h-3).

3 Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance.

4 Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

### **III. Live Organisms**

**1 Human research subjects.** You must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.

#### **2 Animals and plants.**

a. You must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156) and provide for humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.

b. You must follow the guidelines in the National Academy of Sciences(NAS) Publication “Guide for the Care and Use of Laboratory Animals”(1996, which may be found currently at <http://www.nap.edu/readingroom/books/labrats/>) and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the NAS Guide).

c. You must immediately identify to us, as the awarding agency, any potential impact that you find this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended (“the Act,” 16 U.S.C. 1531-1543), and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). You also must provide any help we may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

#### **IV. Other National Policies**

**1 Debarment and suspension.** You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.

**2 Drug-free workplace.** You must comply with drug-free workplace requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

#### **3 Lobbying.**

a. You must comply with the restrictions on lobbying in 31 U.S.C.1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.

b. If you are a nonprofit organization described in section 501(c)(4)of title 26, United States Code (the Internal Revenue Code of 1968),you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting funds under this agreement, you assure that you are not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611).

c. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

**4 Officials not to benefit.** You must comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41U.S.C. 22.

**5 Hatch Act.** If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7326), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

**6 Native American graves protection and repatriation.** If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

**7 Fly America Act.** You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the “Fly America Act,” and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.

**8 Use of United States-flag vessels.**

a. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section shall be furnished to both our award administrator (through you in the case of your contractor’s bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

**9 Research misconduct.** You must comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at 65 FR 76260, December 6, 2000, or on the Internet at [www.ostp.gov](http://www.ostp.gov)), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.

**10 Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC).**

a. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, you agree that you are not an institution of higher education that has a policy or practice placing any of the restrictions specified in 10 U.S.C. 983. as implemented by 32 CFR part 216, on:

- i. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or
- ii. Military recruiters’ access to campuses, students on campuses, or information about students.



b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:

- i. Will cease all payments to you of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and
- ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

**11. Historic preservation.** You must identify to us any:

a. Any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559].

b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1, et seq.).

**12 Relocation and real property acquisition.** You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

**13 Confidentiality of patient records.** You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

**14 Constitution Day.** You must comply with Public Law 108-447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

## **15 Trafficking in Persons**

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

ii. Procure a commercial sex act during the period of time that the award is in effect;  
or

iii. Use forced labor in the performance of the award or subawards under the award.

2. We, as the awarding agency, may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –

i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.

b. Provision applicable to a recipient other than a private entity. We, as the awarding agency, may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 901.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b. of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. “Employee” means either:

- i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
- ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

- i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
- ii. Includes:
  - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
  - B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

## **V. National Policy Requirements for Subawards.**

Recipient responsibility. You must include in any subaward you make under this award the requirements of the national policy requirements in Sections I through IV of this document that apply, based on the type of subawardee organization and situation

**EXHIBIT D  
ATTACHMENT 5  
FEDERAL INTELLECTUAL PROPERTY PROVISIONS**

**Intellectual Property Provisions (NRD-1003)  
Nonresearch and Development**

Under this Agreement, the following intellectual property provisions apply to the rights of the Energy Commission and the U.S. Department of Energy (DOE).

Nonprofit organizations are subject to the intellectual property requirements at 10 CFR 600.136(a), (c) and (d). All other organizations are subject to the intellectual property requirements at 10 CFR 600.136(a) and (c).

10 CFR 600.136 Intangible property.

(a) The Energy Commission may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

(c) DOE has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) (1) In addition, in response to a Freedom of Information act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DOE shall request, and the Energy Commission shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect the costs incurred by the agency, the Energy Commission, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

## EXHIBIT D ATTACHMENT 6

### PROJECT TYPE METRICS

**Metrics Activity:** The key metrics to be reported will vary by project type. The minimum information to be reported, by project activity type, is listed below. The project type metrics to be reported for this award are checked below.

☐ Building Codes and Standards

- ☐ Name of new code adopted  
☐ Name of old code replaced  
☐ Number and percentage of new and existing buildings covered  
by new code  
☐ Other: \_\_\_\_\_

☐ Building Retrofits

- ☐ Number of buildings retrofitted, by sector  
☐ Square footage of buildings retrofitted, by sector  
☐ Other: \_\_\_\_\_

☐ Clean Energy Policy

- ☐ Number of alternative energy plans developed or improved  
☐ Number of renewable portfolio standards established or  
improved  
☐ Number of interconnection standards established or improved  
☐ Number of energy efficiency portfolio standards established or  
improved  
☐ Number of other policies developed or improved  
☐ Other: \_\_\_\_\_

☐ Building Energy Audits

- ☐ Number of audits performed, by sector  
☐ Floor space audited, by sector  
☐ Auditor's projection of energy savings, by sector  
☐ Other: \_\_\_\_\_

☐ Energy Efficiency Rating and Labeling

- ☐ Types of energy-consuming devices for which energy-efficiency  
rating and labeling systems were endorsed by the State government, schools, or  
institutional procurement  
☐ Other: \_\_\_\_\_

☐ Government, School, Institutional Procurement

- ☐ Number of units purchased, by type (e.g., vehicles, office  
equipment, HVAC equipment, streetlights, exit signs)  
☐ Other: \_\_\_\_\_

☐ Industrial Process Efficiency (kwh equivalents)

- ☐ Reduction in natural gas consumption (mmcf)  
☐ Reduction in fuel oil consumption (gallons)  
☐ Reduction in electricity consumption (MWh)  
☐ Other: \_\_\_\_\_

☐ Industrial Retrofit Support

- ☐ Number of buildings retrofitted, by industry type
- ☐ Square footage of buildings retrofitted, by industry type
- ☐ Other: \_\_\_\_\_

☐ Loans and Grants

- ☐ Number and monetary value of loans given
- ☐ Number and monetary value of grants given
- ☐ Other: \_\_\_\_\_

☐ Renewable Energy Market Development

- ☐ Number and size of solar energy systems installed
- ☐ Number and size of wind energy systems installed
- ☐ Number and size of other renewable energy systems installed
- ☐ Other: \_\_\_\_\_

☐ Tax Credits

- ☐ Monetary value of tax credits given, by sector
- ☐ Other: \_\_\_\_\_

☐ Financial Incentives for Energy Efficiency and Other Covered Investments

- ☐ Number and monetary value of financial incentive provided, by sector
- ☐ Total value of investments incentivized, by sector
- ☐ Other: \_\_\_\_\_

☐ Technical Assistance

- ☐ Number of information transactions contacts (for example, webinar, site visit, media, fact sheet) in which energy efficiency or renewable energy measure were recommended, by sector
- ☐ Other: \_\_\_\_\_

☐ Transportation

- ☐ Number of alternative fuel vehicles purchased
- ☐ Number of conventional vehicles converted to alternative fuel use
- ☐ Number of new alternative refueling stations emplaced
- ☐ Number of new carpools and vanpools formed
- ☐ Number of energy-efficient traffic signals installed
- ☐ Number of street lane-miles for which synchronized traffic signals were installed
- ☐ Other: \_\_\_\_\_

☐ Workshops, Training, and Education

- ☐ Number of workshops, training, and education sessions held, by sector
- ☐ Type of workshops, training, and education sessions held
- ☐ Number of people attending workshops, training, and education sessions, by sector
- ☐ Other: \_\_\_\_\_

☐ Other Activities Not Previously Defined

- ☐ Pertinent metric information for any activity not defined above should be captured and included as needed
- ☐ Other: \_\_\_\_\_
- ☐ Other: \_\_\_\_\_



Other: \_\_\_\_\_

**EXHIBIT D  
ATTACHMENT 7**

**DAVIS-BACON AND RELATED ACTS  
29 C.F.R. § 5.5 PROVISIONS**

Pursuant to 29 C.F.R. § 5.5, the following clauses apply to any contract in excess of \$2,000 that is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 C.F.R. § 5.1:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:



(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The Energy Commission shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held

by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### (3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the U.S. Department of Energy (DOE) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to DOE. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to DOE if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to DOE, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this

section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of [title 18 and section 231](#) of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Energy Commission or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to [29 CFR 5.12](#).

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency

(where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in [29 CFR 5.16](#), trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of [Executive Order 11246](#), as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in [29 CFR 5.12](#).

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or [29 CFR 5.12\(a\)\(1\)](#).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or [29 CFR 5.12\(a\)\(1\)](#).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#).

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or [4.6](#) of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Energy Commission shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in [§ 5.1](#), the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-0140
(a)(1)(ii)(C)	1215-0140
(a)(1)(iv)	1215-0140

(a)(3)(i)	1215-0140, 1215-0017
(a)(3)(ii)(A)	1215-0149
(c)	1215-0140, 1215-0017

**SIGNATURE**

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the requirements of 10 C.F.R. § 5.5.

Name of Applicant: \_\_\_\_\_

Printed Name and Title of  
Authorized Representative: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE